

ORIGINAL

**COOPERATION AGREEMENT RELATING TO THE AFFORDABLE
HOUSING CREDIT AND ALLOCATION TRANSFER BY AND BETWEEN THE
REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, THE CITY OF
SAN DIEGO AND THE COUNTY OF SAN DIEGO**

THIS COOPERATION AGREEMENT ("Cooperation Agreement") is entered into this 25 day of August, 2008, by and between the REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO, a public body, corporate and politic (the "Agency"), the CITY OF SAN DIEGO, a municipal corporation (the "City"), and the COUNTY OF SAN DIEGO (the "County"), with reference to the following:

A. Pursuant to the requirements of Health and Safety Code section 33334.2, the Agency is obligated to deposit twenty percent (20%) of the tax increments allocated to it pursuant to Health and Safety Code section 33670(b) into a Low- and Moderate-Income Housing Fund (the "Housing Fund").

B. The Agency, the City and the County (the "parties") agree that a certain portion of the new affordable housing units constructed in whole or in part with up to \$9,800,000 of the Housing Fund shall be used to satisfy the County's share of the regional housing needs allocation ("RHNA") established by the San Diego Association of Governments ("SANDAG") in accordance with the provisions of this Cooperation Agreement.

In consideration of the above recitals and the mutual covenants and conditions set forth in this Cooperation Agreement, and for good and valuable consideration of the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1: SCOPE OF COOPERATION AGREEMENT

1.1 Parties' Participation.

A. The parties agree that a certain portion of the new affordable housing units constructed in whole or in part, with monies from the Housing Fund shall be used to satisfy the County's share of the RHNA as follows:

1. Commencing with the 2007-08 fiscal year and continuing until the earlier of (a) the 2049-50 fiscal year and (b) the date on which the cumulative total of the County Housing Set-Aside Credit (defined below) equals \$9,800,000, the Agency shall annually calculate the County Housing Set-Aside Credit as provided in Section 1.1.A.2, below.

For purposes of this Cooperation Agreement, "Grantville Gross Tax Increments" shall mean tax increments allocated and paid to and actually received by the Agency for the Redevelopment Plan for the Grantville Redevelopment Project Area ("Grantville Redevelopment Plan") that was approved and adopted

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DOCUMENT NO. D-04319/R-04319

FILED

SEP 17 2008

OFFICE OF THE REDEVELOPMENT AGENCY

SAN DIEGO, CALIF.

by the City Council by Ordinance Number 0-19380 (New Series) on May 17, 2005 pursuant to Section 33670 of the California Community Redevelopment Law (Health & Safety Code 33000, et seq.) and the Grantville Redevelopment Plan.

For purposes of this Cooperation Agreement, "Agency Housing Set-Aside" shall mean twenty percent (20%) of the Grantville Gross Tax Increments.

For purposes of this Cooperation Agreement, "County Housing Set-Aside Credit" shall mean eight and one-tenth percent (8.1%) of the Agency Housing Set-Aside. The County Housing Set-Aside Credit shall be maintained in a separate account within the Housing Fund and shall be used to satisfy the County's share of the RHNA.

2. Within forty-five (45) days after the end of each fiscal year, the Agency shall calculate the County Housing Set-Aside Credit for the previous fiscal year and shall provide the County with a written statement of such calculation.

B. Within forty-five (45) days after the end of each RHNA period as contemplated under Government Code section 65584 or under self certification procedures at section 65585.1 or other applicable law (the "Period"), the County and the Agency shall meet to do the following:

1. Determine the number of new affordable housing units constructed, rehabilitated or preserved ("New Units") during the previous Period with the assistance, in whole or in part, of the County Housing Set-Aside Credit, which number of units should be transferred from the County to the City ("County Transfer Units") for purposes of the RHNA.

2. If the number of County Transfer Units includes a fractional amount, the parties shall: (A) round up to the nearest whole number if the fractional unit is .5 or more; and (B) round down to the nearest whole number if the fractional unit is .5 or less.

C. Within sixty (60) days after the end of each Period, the City and the County shall jointly submit to SANDAG a written proposal to transfer from the County to the City a number of units equal to the number of County Transfer Units for purposes of the parties' respective RHNA shares. The parties agree to cooperate in good faith to obtain SANDAG's approval of the transfer proposal.

D. If SANDAG does not approve the City's and County's transfer proposal, the County, City and Agency may agree to effect the transfer pursuant to the procedures set forth either in Government Code section 65584.07 (which permits a transfer between the date on which SANDAG releases its final RHNA and the due date of the housing element update) or Government Code section 65584.05, whichever the County elects.

E. The Agency shall have the option in any year to elect to pay all or any part of the County Housing Set-Aside Credit to the County so long as the County uses the allocation in accordance with Health and Safety Code sections 33413 (b), 33334.2, and 33334.3 and timely reports its compliance, and so long as a proportional number of dwelling units are deducted from the number of County Transfer Units.

F. Agency agrees to diligently and timely expend funds in accordance with Health and Safety Code sections 33413(b), 33334.2, and 33334.3.

ARTICLE 2: INDEMNIFICATION

2.1 Indemnification. County agrees to defend, indemnify, protect, and hold Agency and City and all of their officers, agents, and employees harmless from any and all actions, suits, proceedings, liability, loss, expense (including all expenses of investigation and defending against same), and all claims for injury or damages to any person, arising out of the performance of this Cooperation Agreement or any agreement entered into to implement this Cooperation Agreement, but only in proportion to and to the extent such actions, suits, proceedings, liability, loss, expense or claims for injury or damages are caused by, or result from, the negligent or intentional acts or omissions of County, its officers, agents, or employees.

Agency agrees to defend, indemnify, protect, and hold County and City and all of their officers, agents, and employees harmless from any and all actions, suits, proceedings, liability, loss, expense (including all expenses of investigation and defending against same), and all claims for injury or damages to any person, arising out of the performance of this Cooperation Agreement or any agreement entered into to implement this Cooperation Agreement, but only in proportion to and to the extent such actions, suits, proceedings, liability, loss, expense or claims for injury or damages are caused by, or result from, the negligent or intentional acts or omissions of Agency, its officers, agents, or employees.

City agrees to defend, indemnify, protect, and hold County and Agency and all of their officers, agents, and employees harmless from any and all actions, suits, proceedings, liability, loss, expense (including all expenses of investigation and defending against same), and all claims for injury or damages to any person, arising out of the performance of this Cooperation Agreement or any agreement entered into to implement this Cooperation Agreement, but only in proportion to and to the extent such actions, suits, proceedings, liability, loss, expense or claims for injury or damages are caused by, or result from, the negligent or intentional acts or omissions of Agency, its officers, agents, or employees.

If any transfer of a portion of the County's RHNA to the City pursuant to this Agreement is challenged by a third party, the County and the Agency shall cooperate and jointly defend against such challenge. The provisions of this section shall survive the expiration, termination, or assignment of this Cooperation Agreement.

2.2 No Joint and Several Liability. The parties acknowledge and agree that as stated in Government Code section 895, this Cooperation Agreement is an agreement between public entities designed to implement the disbursement or subvention of public funds from one entity to the other and, as such, is not subject to the joint and several liability provisions of Government Code sections 895 to 895.8.

ARTICLE 3: GENERAL PROVISIONS

3.1 Costs During the Transfer Process. County, City, and Agency shall each bear their own costs incurred during the transfer process.

3.2 Agency's Obligations Under the Community Redevelopment Law. Nothing in this Cooperation Agreement is intended to affect the Agency's ability to include all affordable housing units created or assisted, in whole or in part, with the County Share of the Housing Set-Aside, towards satisfying the Agency's obligations under Health and Safety Code sections 33413 (b), 33334.2, and 33334.3.

3.3 Default. If any party fails to perform or adequately perform an obligation required by this Cooperation Agreement within thirty (30) calendar days of receiving written notice from the non-defaulting party, the party failing to perform shall be in default hereunder; provided, however, that if such obligation cannot reasonably be performed within said 30 day period, no default shall have occurred if the nonperforming party commences to cure within said 30 day period and thereafter diligently pursues the cure to completion. In the event of default, the non defaulting party will have all the rights and remedies available to it at law or in equity.

3.4 Entire Cooperation Agreement. This Cooperation Agreement constitutes the entire Cooperation Agreement between the Agency, the County and the City.

3.5 No Waiver. No failure of the Agency, the County or the City to insist upon strict performance by the other of any covenant, term or condition of the Cooperation Agreement, nor any failure to exercise any right or remedy consequent upon a breach, shall constitute a waiver of any such breach of such covenant, term or condition.

3.6 No Third Party Beneficiary. The parties agree that this Cooperation Agreement is made solely for the benefit of the Agency, the County and the City, and no third person or entity shall be deemed to have any rights or remedies hereunder.

3.7 Amendments. All amendments or modifications to the Cooperation Agreement shall be in writing and executed by both parties.

3.8 California Law. The laws of the State of California shall govern and control the terms and conditions of this Cooperation Agreement.

3.9 Institution of Legal Actions. In addition to any other legal rights or remedies,

either party may institute legal action to cure, correct, or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Cooperation Agreement. Such legal actions must be instituted in a court of competent jurisdiction in the County of San Diego, California.

3.10 Counterparts. This Cooperation Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all parties had executed the same page.

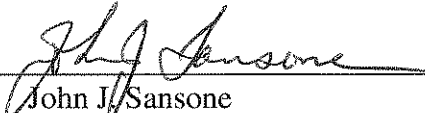
3.11 Signing Authority. The representative signing on behalf of each party represents that authority has been obtained to sign on behalf of the party.

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IN WITNESS WHEREOF, this Cooperation Agreement is executed by the Redevelopment Agency of the City of San Diego by and through its Executive Director, or designee, and this Cooperation Agreement is executed by the City of San Diego by its Mayor, or designee.

COUNTY OF SAN DIEGO

Date: August 29, 2008

By: 
John J. Sansone
County Counsel

[Signatures Continue on Following Page]

REDEVELOPMENT AGENCY
OF CITY OF SAN DIEGO

Date: 8.25.08

By: 

Jerry Sanders
Executive Director

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. AGUIRRE, General Counsel

By: _____

Deputy General Counsel
Attorneys for Defendant Redevelopment
Agency of the City of San Diego

KANE, BALLMER & BERKMAN

By: 

Murray O. Kane
Agency Special Counsel
Attorneys for Defendant Redevelopment
Agency of the City of San Diego

CITY OF SAN DIEGO

Date: 8.25.08

By: 

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. AGUIRRE, City Attorney

By: _____

Deputy City Attorney
Attorneys for Defendants City of San Diego
and Council of the City of San Diego

Housing Credit Cooperation Agreement (6-14-8)